

Risk Matters



A Pooled Liability Assurance Network
Providing self-insured coverage to cities in the San Francisco Bay Area

ABAG PLAN UNVEILS NEW WEB RESOURCES

Risk management involves identifying and responding to situations that have the potential to cause loss. As such, ABAG PLAN is constantly on the lookout for new risks and ways to minimize their potential harm. Our website has been redesigned to help fulfill this mission. It provides more detailed information to our members and serves as a comprehensive resource for risk management topics.

Located at www.abag.ca.gov/services/plan, the Risk Management and Insurance Services website includes more information and access to ABAG's service programs, resources, links to local and national services, and an expanded members-only area. The Services button briefly describes what ABAG Risk Management and Insurance offers to member communities and provides links to those communities, to PLAN staff, the ABAG Training Center, and the Workers Compensation Program.

The Resources page is organized by eleven topics including: Risk Management, Insurance, Police, Government, Parks & Recreation, Workers Compensation, Training,

Earthquakes, Reference, and Vendors. Within the topics, links offer access to conferences, organizations, newsletters, and other informative sites. For example, the Police topic includes links to Mayer & Coble Homepage, PoliceTraining.net, Commission on Peace Officer Standards and Training, and Copcruiser. Each topic contains links to a range of materials, with plans to expand as new links are identified internally and by member cities.

Special Features

The Login page is valuable to member communities, board members, and PLAN liaisons. With an ABAG provided password, useful forms, insurance policies, and procedure guides, in addition to the calendar, meeting agendas, and Risk Master program access, are all available whenever you need them. For example, the process for extending coverage to an additional insured or adding loss payee endorsements has been simplified and made very accessible on the website. With a couple of clicks, you have the ability to complete and print your own Certificate of Insurance form directly from the site.

Manuals and resources are also readily available for the first time. For example, the property policy manual is accessible, and ready to be downloaded for your reference. You don't have to wonder anymore who has a copy and where you can get one.

Take the time to review our site: it is designed to make risk management less risky.

On the move: New training partnership formed when ABAG PLAN Mobile Training Unit was sold to South Bay Regional Public Safety Training Consortium.

See article page 2.



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Risk Management

An analysis of recent efforts to minimize risk and prevent losses

ON THE MOVE: ABAG PLAN'S MOBILE TRAINING UNIT

ABAG PLAN, the Pooled Liability Assurance Network, has sold its award-winning mobile training unit to the South Bay Regional Public Safety Training Consortium. Selling the mobile unit to the Consortium begins a partnership to expand ABAG PLAN member training. We feel that this Consortium partnership is the best way for our members to continue to receive the very best training, using the latest technology, at an economic cost to the PLAN, explains ABAG PLAN program manager, Marcus Beverly.

The PLAN mobile police training unit is a custom-built, tractor-trailer rig that houses four computerized driving simulators with wrap-around video screens. PLAN has also maintained a firearms training system (FATS) which uses laser-activated weapons and emergency scenarios projected on a video screen. Both training tools were unveiled on October 20, 1994, and the mobile police training unit was heralded as the nation's first to bring the latest training on-site to cities and departments. Over the past six years, more than 2000 police officers and 500 civilian and firefighter personnel have received valuable on-site training at 26 Bay Area locations.

However, as part of ongoing program review, PLAN recognized that the mobile unit's training technology needed to be upgraded and that continuous training was necessary

to maintain its POST (Peace Officer Standards and Training) certification. It was evident that upgrading equipment to provide the higher technology needed for newer, more graphic scenarios would be cost prohibitive. It was also noted that many other groups had followed PLAN's lead and were now also providing mobile POST certified training. These needs and more were met in PLAN's transaction with the Consortium.



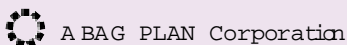
Marcus Beverly, PLAN program manager, on the right, hands over mobile unit keys to Ron Havner, Dean of Public Safety Training, South Bay Consortium.

The tractor-trailer and FATS were transferred to the Consortium on October 26, 2000. The trailer will be used as a mobile classroom, while the FATS and new driving simulators will be in separate trailers. The old driving simulators were sold for export to Mexico, where they will continue to be used for training police and safety personnel.

What Happens Next

The Consortium plans to reconfigure the tractor-trailer unit and provide more classroom space featuring the latest scenario technology, with training conducted by POST certified instructors. As part of the agreement, PLAN members will receive from the Consortium 24 hours of certified training every two years. This will include eight hours of mobile driving and firearms training, as well as many more specialized classes and access to a police cadet academy and fire academy. The equipment and classes will be available for instruction by the first part of April 2001, and a coordinator will contact each PLAN member city to set up a schedule.

Mobile unit on-site training has been a popular and very successful component of PLAN members' loss prevention training, and now it will be bigger and better. This is important, says ABAG PLAN program manager Marcus Beverly, because practicing how to de-escalate potentially violent situations and how to avoid automobile collisions can save cities millions of dollars and, more importantly, the lives of officers and the public.



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SAFETY SAVES—DEFENSIVE DRIVER TRAINING CLASSES

Eileen Barr, Claims Examiner

For a number of years, ABAG PLAN has offered driver training to city employees to help improve driving skills and reduce the number and severity of city-related vehicle accidents. Although ABAG PLAN is not presently conducting training, cities still have the option of providing training for their employees. The State of California offers a defensive driving program that is open to public employees and fulfills the State of California drivers training requirements. City employees are encouraged to attend this training at least once every four years.



This three and one-half hour class uses videos, lectures, tests, and personal experience to review safe driving techniques. The fee is \$20 per student and \$35 for van pool

training. Classes are held in various locations throughout the state. You can also arrange for teachers to come right to your own facility for \$500, the cost for a minimum of 25 students.

For basic information about the defensive driving program, and current schedule of classes, visit the state's risk management website at:

www.orim.dgs.ca.gov/lossctrl/training/ddtinfo.asp.

If the thought of typing in all of these letters gives you a headache, you can contact Irene McLaughlin at (916) 322-8969 or CALNET 492-8969 or ddt@dgs.ca.gov.

To set up a class for a minimum of 25 students at your own facility, contact Driver Training Program Coordinator Kimberly Puccini at kimberly.puccini@dgs.ca.gov, or at (916) 323-4799 or CALNET 473-4799.

Sending your employees to this training can reduce the number of vehicle accidents and the money that cities subsequently pay in both property damage and liability claims.

FEMA BACKS DOWN ON INSURANCE REQUIREMENTS - FOR NOW

BENCHMARK STUDY BEING CONDUCTED

There has been much discussion and concern among California public agencies about FEMA's proposed Insurance Requirements for the Public Assistance Program. The cost and availability of earthquake insurance to meet the proposed standards, and the impact it would have on public agency budgets, was a major concern during most of last year. Therefore, many public agencies, including ABAG, cheered recently when the state's congressional representatives helped to defeat an effort in Congress, prompted by the proposed regulations, to require local and state government entities to insure their public buildings against natural disasters.

The response to the proposed regulations has caused FEMA to back down for now. Of the 291 responses received, 63 percent were from California, and most dealt with concerns over the availability and pricing of earthquake insurance. Other concerns involved the ability to

self-insure some or all of the exposure, administrative burdens, premium thresholds, and reimbursement of deductibles. The complete report is at <http://www.fema.gov/r-n-r/proinsur.htm>.

FEMA has agreed to conduct a study of current public entity building insurance coverage to assist in the evaluation of options, as well as to establish a benchmark for whatever criteria are eventually implemented. Their report states there is strong support for some form of incentive regarding a provision to condition future Public Assistance on insurance being in place at the time of the disaster, in spite of the fact there were only 52 respondents (18%) who favored incentives for purchasing insurance.

It is clear from these and subsequent comments by FEMA personnel that this issue is not going away. FEMA is likely to require some type of insurance in the future. We will continue to monitor the situation and are looking at pooling options for our earthquake exposure to reduce the cost of insuring this risk for our members.

MEET ABAG PLAN'S NEWEST ADDITIONS

ABAG PLAN Corporation is pleased to feature Chantelle Doan, our new claims examiner, and our new secretary, Carol Johnson, who processes claims and assists the claims examiners.



New Claims Examiner, **Chantelle Doan**, has seven years of claims experience and currently handles claims for the Cities of Burlingame, South San Francisco, and Gilroy. She has Associate and Bachelor degrees in Liberal Studies from San Francisco State University.

Before joining ABAG PLAN, Chantelle was a claims examiner at Commerce West Insurance. She investigated and concluded property and bodily injury claims, specializing in the area of property damage and vehicle repairs. She also served as a negotiator between vendors and adjusters. Chantelle began her insurance career working for California State Automobile Association as a claims adjuster and later became a field adjuster. Her broad claims experience includes auditing estimates and subrogation demands, working and negotiating with body shops, special investigation and fraud claims, property damage, and bodily injury claims. Chantelle also brings managerial experience gained during her career phase as a retail manager/buyer.

Chantelle, a native Californian, resides with her husband in the East Bay. In her spare time she enjoys needlepoint. We are sure you will enjoy working with Chantelle, who can be reached at 510-464-7972 and by e-mail at

ChantelleD@abag.ca.gov.

As interviewed by Carol Johnson

New Secretary, **Carol Johnson** brings seventeen years of work experience to ABAG that includes entrepreneurial, management, and administrative skills. After college where she received a Liberal Arts degree with emphasis in public speaking, Carol pursued a career in banking, becoming bank branch manager responsible for staffing, daily bank operations, promotions, and customer service. Later, Carol served as operations manager for a child welfare agency and was responsible for staffing, purchasing, maintenance, and work distribution. She was also instrumental in developing work policies and regulations with the organization. Carol made a major move from Michigan to California where she eventually started her own business, opening a full service salon and operating a soft skills program which she developed, staffed, provided training on workforce presentation and professional skills. Carol's clients included welfare-to-work recipients and the general public.



On a personal note, Carol, a Michigan native, has loved living in the Bay Area for the past eighteen years with her two children. One of her favorite hobbies is doll making. We are sure you will enjoy working with Carol. She can be reached at 510-464-7962 or at CarolJ@abag.ca.gov.

As interviewed by Chantelle Doan

PROPERTY SCHOOL FOR ABAG PLAN EXAMINERS

By Angela Salsbury, Claims Manager

We are pleased to announce that another ABAG PLAN Examiner has completed the two-week Residential Building Damage Estimating Course at the Vale Institute located in Fresno, California. After completing this course, Examiners are able to write complete, detailed and accurate estimates on damaged dwellings. The course also covers writing estimates for windows and doors, cleaning and painting, plaster, drywall, floorings, trim, and cabinets. See Examiner Jim Nagal's article on the next page on the scope of training and expertise gained in this course.

The new, detailed knowledge gained from the course empowers examiners in their interactions with contractors. Rather than have contractors write estimates for damage and then submit to the examiner, the examiner now has the ability to write up the scope of repairs, which the homeowner then submits to the contractor. The examiner's ability to determine the scope of work in advance results in a faster settlement of the claim and saves our members thousands of dollars in repair costs.

ESTIMATING RESIDENTIAL DAMAGE

By Jim S. Nagal, Claims Examiner

Residential damage claims arising from sewage back-ups are generally some of the larger liability exposures for PLAN members. The causes of residential backflows are many and the significance of prompt and thorough sewage remediation have been covered in previous Risk Matters articles. There is another important tool for controlling these remediation costs, which is ensuring that contractors bids cover the *same* damages, labor, materials, and reconstruction.

For that reason, a department goal is to have each ABAG PLAN Examiner attend the Residential Building Damage Estimating Course at the Vale National Training Center. When examiners complete this course, they are equipped with the knowledge needed to produce complete, detailed, accurate and professional residential damage scopes and reconstruction estimates. These consistent and complete scopes and estimates are what the contractors will use to propose their bids, and our ability to determine the scope of work in advance creates a more efficient and cost effective system for our members.

Kind of Training Provided

This examiner recently completed the intensive two-week course on residential building damage estimation conducted by the Vale National Center. Vale National trains insurance personnel and others in property damage estimating, as well as casualty and liability adjusting. The Residential Damage Estimation Course teaches traditional scoping and estimating skills (written estimates). The first phase of

the course I took emphasized learning the types and characteristics of different building materials, and then how each material was measured and used in residential construction, as well as ascertaining the quality of materials.

There were daily quizzes and at least one daily estimate. The classroom itself displayed samples of building materials.

The Vale

House, which contained actual damages on which our estimates were based, was located in the adjoining warehouse. Remediation, clean up and debris removal; rough carpentry and framing; masonry and concrete; flooring; stucco, plaster and drywall; wood trim, cabinets and vanities; and plumbing, electrical, roofing, and HVAC were among the subjects covered.

Additionally, Vale offers a class on structural damage repair estimates for commercial buildings of four stories and less, as well as residential and automotive damage courses via numerous Windows-based automated data programs.



Photo: Vale House



Photo: Vale Classroom

ARE YOU THROWING AWAY AN IMPORTANT DOCUMENT?

By Lori Hardacre, Claims Examiner

You know what it's like — a pile of correspondence arrives and you have to sort through it before getting back to one of the numerous other tasks written down on the to do list, that you composed yesterday. Included in your correspondence is a new claim for \$10 million presented to the city, for an accident that reportedly occurred more than six months ago. So what are the first things you should do? No, crying isn't one of them.

The first action to take, whether the claim notice is delivered in person to City Hall or received by mail, is to stamp today's date on the claim notice. If the claim was personally delivered, it may be useful for the person receiving the claim to also include her/his initials and to note the time when the claim was received. This notation can be helpful in the rare event a dispute later arises regarding the time of submission of a personally-delivered claim. The primary purpose of this article is to serve as a reminder of another very important step in the initial claim processing. *If the claim was mailed to the city, it is very important for the envelope to be retained in the claim file.*

The majority of claims forwarded to our office have been received within the time period granted under Government Codes, which is six months for personal property and one year for real property. Regarding claims where timely submission is not an issue, we proceed with an investigation looking into the possible merits of the claim. However, in those cases where the claim is submitted to the city, even one day past the allowable time period, determining the merit of the claim would be secondary. Our first response would, instead, be to recommend an assertion of the city's defense that the claimant failed to submit the claim in a timely manner.

Case in Point

A recent claim demonstrated the reason why retaining the envelope on a claim can prove to be very important. The claim form had been signed by the claimant just a few days before the six-month statute expired. However, the date stamp shows that the city received the claim three days after the statute expiration. On its face, the claim

would seem to have been submitted late, indicating that a notice rejecting the late claim should be sent. Upon receipt of the late claim rejection, the claimant contacted the city to assert that he had in fact mailed his claim the day before the statute expired.

For the purpose of determining timelines, notice of the claim is set either by the date of personal delivery to the city or the date when the claim notice is placed in the mail for delivery. Unfortunately, in this particular instance the envelope with the postmark had been thrown away. Being

unable to prove that the claim was submitted late, and given the fact that three days is a reasonable time frame for delivery by the postal service, we had to proceed with the investigation into the merit of the claim allegations. Without

the postmarked envelope, the verbal representation by the claimant made it unlikely any court would uphold the assertion of a late claim defense.

If, however, the envelope had been retained, we might have seen a postmark date showing that the claim was actually mailed after the statute expired. Despite the claimant's assertions of a timely submission, postmark documentation would have allowed us to stand firm on the untimely claim defense. The burden of pursuing this claim would have shifted to the claimant requiring him/her to take appropriate steps: such as, submitting an application to file a late claim and possibly petitioning the court for relief from the claim act requirements. Retention of the envelope is also important when the city receives an application to present a late claim. The claimant has a limited time period within which to present any such application, and failure to meet that deadline is also a defense the city can use. The defense can best be asserted if we have the documentation demonstrating the claimant's failure to meet the one-year requirement to file the application to present a late claim.

Envelopes bearing correspondence from claimants are often tossed out as unnecessary paper, but we would encourage you to make it a habit of retaining these envelopes in the claim files. Something as simple as an envelope may prove to be a piece of documentation crucial to the city's successful claim defense.



In My Opinion—

IT'S NOT EASY HAVING GREEN

To mediate or not to mediate, that is a question.

T.L. Hickman/Litigation Supervisor

As ABAG PLAN's Litigation Supervisor, I have the responsibility to evaluate tort liability claims that have degenerated into lawsuits. That used to be the hard part of the job. Every lawsuit is different and complex. The accident facts, damages, liability, legal fees, plaintiffs, attorneys, attitudes, egos, personal agendas they all come into play when trying to place a dollar figure on a case that I feel is fair to both sides. I realize some plaintiff attorneys reading this may be rolling on the floor laughing by now, after my claim that I try to evaluate something fair to both sides, but that's true. Experience has shown me that trying to lowball a settlement just doesn't work and is counter-productive in general.

Now once that evaluation is made, and authority confirmed with our PLAN member, what's next? Should be simple, right? I can just call up the plaintiff's attorney, tell him that I am ready to settle the case and after some posturing and negotiating both sides come to an agreement and settlement is reached. Right? Nope, wrong. Early settlement has become an uncommon occurrence over the past five years or so.

I contend the problem lies with a good idea that has gotten out of control—formal mediation. Private mediation services have expanded at a pace something akin to dot.commers. To hire one of these third-party mediators (usually a retired judge) one must pay \$200-\$500+ an hour on the average. Don't misunderstand, I love mediation. I've seen cases settle at mediation that I thought were hopeless and a trial inevitable. However, many cases today that end up in mediation simply have no business being there. That means that both sides are having to complete and pay for a lot of unnecessary discovery to present a case at mediation and then they have to pay the mediation fee on top of that!

In my opinion, a number of plaintiff attorneys have become lazy. Many were never all that great at negotiating and now they don't even have to. They can have the mediator do it for them. Even better, they can blame a disappointing case evaluation on the mediator. Finally, by allowing plaintiffs to participate in mediation, they sort of get their day in court, which helps the attorney keep clients under control.

While mediation is terrific in cases that need exactly that kind of assistance, it is a shame in those cases where a five minute phone call could have settled the case with a substantial saving of time and money. We at ABAG have had some success in avoiding legal costs by calling the plaintiff attorney to discuss settlement, prior to referring the case to defense counsel for an answer.

If we can catch them in the mood to settle prior to incurring any legal costs, we have the greatest chance of avoiding unnecessary litigation. Once the litigation progresses, the attorney is much more likely to let it run its course, at least through mediation or arbitration, rather than discuss settlement. Of course, we continue to keep the lines of communication open and revisit negotiating the claim during the discovery process, especially after a deposition or other piece of discovery is presented that may change how the plaintiff attorney views the case.

Unfortunately, lawsuits need cooperation from all parties to accomplish a settlement. Just one side having the green and desire to settle was never enough and now it seems to be getting even more difficult to accomplish. This is a trend we are struggling with, in my opinion.

Cities are encouraged to e-mail any questions or authorization directly to their Examiner. Direct contact greatly expedites the handling of claims and minimizes unnecessary delays.

WHAT'S NEW

By Angela M. Salsbury, Claims Manager

SIDEWALK ORDINANCE

All members have received information regarding the San Jose ordinance that shifts the liability for injury from municipalities to the adjoining private property owners. This ordinance has been upheld in litigation.

Since January 2000, we have received 38 trip-and-fall sidewalk claims. Three of

these sidewalk claims are in litigation and thus far some of our members have paid over \$14,000 for bodily injury settlements and court costs. One of our members has already adopted the ordinance and we have had other member inquiries. If you did not receive a copy of the ordinance and would like one, please contact Angela Salsbury by phone (510) 464-7954 or e-mail AngelaS@abag.ca.gov.

MEMBER CITIES ACCESS NEW CLAIMS SOFTWARE SYSTEM

Two of our cities will soon have remote access to our new claims software. The two cities who will participate in this test project are Burlingame and Campbell. They will be able to view all of their city claims and review everything contained in their claim files, such as all payments made on their claims, the Examiner's notes, and claimant and attorney information. If the test city has any questions or

information after reviewing the claims, they will be able to e-mail them directly to the Examiner. This pilot test will help evaluate the effectiveness and efficiency of access. Eventually all members will have remote access to our claims software system. If other cities would like more information or be involved in this process, contact Angela Salsbury by phone at (510) 464-7954 or e-mail AngelaS@abag.ca.gov.

*Actuary &
Underwriting
Committee

2/21 @ 10:30 a.m.

*Police Chief
Steering
Committee

2/26 @ 11:00 a.m.

*Loss Prevention
Committee

3/1 @ 10:00 a.m.

*Finance
Committee

3/15 @ 10:00 a.m.

*ABAG PLAN Board
of Directors

5/15 @ 11:30 a.m.


*MetroCenter
ABAG Conference
Room B, Oakland

Training Offered:

Need specialized safety
training classes: check out
www.abag.ca.gov/training

Or... In A Hurry?

Can't come to class? Check
out our new online courses:
www.hazmatschool.com

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